

ORIGINAL

RECEIVED

BEFORE THE

Federal Communications Commission

JUL - 2 1991

WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of

JAMES KILLINGER CORNICK

For Construction Permit for a
New FM Station on Channel 278A
at Marion, Virginia

File No. BPH-910311MA

RECEIVED

JUL 5 1991

To: The Chief, FM Branch

FM EXAMINERS

5 PETITION TO DISMISS OR TO DENY 41

Cope II Broadcasting Partners ("Cope II"), by its attorneys and pursuant to Section 73.3584(a) of the Commission's Rules, hereby petitions the Commission to dismiss or deny the above-captioned application of James Killinger Cornick for a new FM radio station at Marion, Virginia.^{1/} As set forth below, Cornick's application is technically defective and was erroneously accepted for filing. Accordingly, Cornick's application must be dismissed, returned or denied.

1. Appended hereto as Exhibit A is a Technical Statement by David E. Dickmann of the consulting engineering firm of du Treil, Lundin & Rackley, Inc. As stated therein, Mr. Cornick's

^{1/} Public notice of the acceptance for filing of Cornick's application was released on May 29, 1991. See Report NA-148, Mimeo No. 13247. This Petition is timely filed pursuant to the July 2, 1991 deadline set forth in that Public Notice.

Cope II has filed an application for a new FM station on Channel 278A at Marion, Virginia that is mutually exclusive with Cornick's application. See FCC File No. BPH-910312MF. Cope II therefore has standing to file this Petition.

Marion proposal is short-spaced by approximately six kilometers to co-channel FM station WIMZ-FM, Channel 278C, Knoxville, Tennessee, and Cornick has therefore invoked the "contour protection" provisions of Section 73.215 of the Commission's Rules. As the attached Technical Statement demonstrates, however, Mr. Cornick's contour protection map is in error, and prohibited contour overlap will in fact occur between Cornick's proposal and WIMZ-FM, in contravention of Commission technical requirements.

2. Public notice of acceptance of Mr. Cornick's application for tender was released on May 10, 1991. See Broadcast Applications, Report No. 14991, Mimeo No. 13012. The 30-day "amendment-as-of-right" period following the notice of tenderability ended on June 12, 1991. A search of the Commission's records has revealed no filing of any corrective amendment to Mr. Cornick's application, either on or before that date or at any time since.

3. Section 73.3566(a) of the Commission's Rules clearly states that "[a]pplications which are determined to be patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing or if inadvertently accepted for filing will be dismissed." (Emphasis added). An application in violation of the Commission's minimum mileage separation requirements or other technical regulations is deemed to be defective and unacceptable for filing. See, e.g., Emmy Hahn Limited Partnership, 4 FCC Rcd

8336 (1989); Saxton Steele Communications, 4 FCC Rcd 2094 (1989); Stevens Point Communications Corp., 2 FCC Rcd 1747 (M.M. Bur. 1987).

4. In the Report and Order in MM Docket No. 84-750, 50 Fed. Reg. 19936, recon. denied, 50 Fed. Reg. 43157 (1985), the Commission adopted new processing procedures for commercial FM applications. These procedures restrict the period of time within which amendments of applications may be filed. "Since the adoption of the new processing rules, the Commission has clearly stated that applicants . . . may not correct acceptability defects after the time for filing amendments as of right." Julie J. Carey, 6 FCC Rcd 1366 (M.M. Bur. 1989); see also Primemedia Broadcasting, Inc., 3 FCC Rcd 4293 (1988). Thus, where an acceptability defect is uncorrected within the 30-day "amendment-as-of-right" period following public notice of the application's acceptability for tender, the application has been returned or dismissed. See, e.g., Emmy Hahn Limited Partnership, supra; Stevens Point Communications Corp., supra; Section 73.3566(a) of the Commission's Rules.

5. As shown in the attached Technical Statement, there is prohibited overlap between Cornick's Marion, Virginia proposal and station WIMZ-FM, Knoxville, Tennessee, in violation of Section 73.215 of the Commission's Rules. Cornick has not requested a waiver of that provision; nor did he file an amendment correcting this deficiency within the 30-day period following public notice of acceptance of his application for

tender. Cornick's application is therefore defective, it was inadvertently accepted for filing, and it must be dismissed.

CONCLUSION

Accordingly, Cope II respectfully requests that James Killinger Cornick's above-captioned application for a new FM station at Marion, Virginia be dismissed, returned or denied as inadvertently accepted for filing.

Respectfully submitted,

COPE II BROADCASTING PARTNERS

FISHER, WAYLAND, COOPER
& LEADER
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 659-3494

By: 

Grover C. Cooper
Gregory L. Masters

Its Attorneys

Dated: July 2, 1991

EXHIBIT A

TECHNICAL STATEMENT
IN SUPPORT OF A PETITION TO DENY
THE FM APPLICATION OF JAMES KILLINGER CORNICK
FOR A NEW FM STATION AT MARION, VIRGINIA
PREPARED FOR
COPE II BROADCASTING PARTNERS
MARION, VIRGINIA

This technical statement has been prepared on behalf of Cope II Broadcasting Partners, applicant for a new FM station on channel 278A at Marion, Virginia (File No. BPH-910312MF), in support of a Petition to Deny the application of James Killinger Cornick (File No. BPH-910311MA) for this same allotment at Marion, Virginia.

Prohibited Contour Overlap

Under the provisions of 47 CFR 73.207, Mr. Cornick's proposal is short-spaced by approximately 6 kilometers to co-channel FM station WIMZ-FM, channel 278C, Knoxville, Tennessee (actual separation 219.9 kilometers, required separation 226 kilometers), and thus, it was filed as a short-spaced assignment under the provisions of 47 CFR 73.215, "Contour protection for short-spaced assignments." However, an engineering review of Mr. Cornick's application reveals that there is prohibited overlap between the 40 dBu [F(50,10)] interfering contour of co-channel FM station WIMZ-FM, channel 278C, Knoxville, Tennessee and the 60 dBu [F(50,50)] protected contour of Mr. Cornick's proposal in contravention of 47 CFR 73.215.

Based on the requirements of 47 CFR 73.215, a study was done to determine if Mr. Cornick's proposal meets the contour protection requirements as is stated in

his application. The average terrain elevations from 3 to 16 kilometers from the sites along the standard eight radials evenly spaced at 45° intervals and supplemental radials along bearings pertinent to the contour protection study were obtained from the N.G.D.C. 30-second computer terrain database. Using the antenna heights above average terrain in the individual radial directions and the respective effective radiated powers in conjunction with the F(50,50) and F(50,10) curves of 47 CFR 73.333, the distances to the 60 dBu [F(50,50)] protected contours and the 40 dBu [F(50,10)] interfering contours for the two facilities were determined by employing the provisions of 47 CFR 73.313. In accordance with 47 CFR 73.215(b)(2)(ii), an assumed WIMZ-FM facility with 100 kilowatts effective radiated power and antenna height of 600 meters above average terrain was used in the study. The antenna heights above average terrain used for Mr. Cornick's proposal are based on the value for the antenna radiation center height above mean sea level specified in Mr. Cornick's application. As is current Commission practice, no consideration was given to terrain roughness correction factors.

Figure 1 is a contour protection study showing the protected and interfering contours for the assumed WIMZ-FM facility and the proposed facility of James Killinger Cornick. As can be seen, there is a substantial area where the 40 dBu [F(50,10)] contour of the assumed WIMZ-FM overlaps the 60 dBu [F(50,50)] contour of Mr. Cornick's proposal. Attached as Figure 2 are tabulations of the data employed in the contour protection study.

From the tabulation in Figure 2 for the assumed WIMZ-FM facility, it can be seen that the antenna height above average terrain along the bearing from the WIMZ-FM site to the site of Mr. Cornick's proposed facility (68° true radial) is approximately 607.8 meters as opposed to 263.35 meters as stated in "Exhibit E-2 - Figure 6" of Mr. Cornick's proposal. As a result of understating the antenna height above average terrain along this radial, Mr. Cornick's contour protection map ("Exhibit E-2 - Figure 5" of his application) shows a considerable indentation in the contours for his assumed WIMZ-FM facility in the direction toward his proposed facility. Therefore, Mr. Cornick's contour protection map is in error, and prohibited contour overlap is predicted to occur as is shown in the attached Figure 1.

Indeed, based on data from Mr. Cornick's proposal, contour overlap is predicted to occur. Using the stated value of 600.26 meters height above average terrain for an assumed WIMZ-FM as per "Exhibit E-2 - Figure 5" of Mr. Cornick's proposal and the average terrain elevation of 343 meters based on the standard eight radials as per Mr. Cornick's "Exhibit E-2 - Figure 7", the antenna height above mean sea level based on Mr. Cornick's application would be 943 meters (to the nearest meter). Therefore, along the 68° true radial, using the 336 meter average terrain elevation reported in his "Exhibit E-2 - Figure 7", the antenna height above average terrain should have been reported as 607 meters (943 meters minus 336 meters) instead of 263.35 meters. This 607 meter figure is nearly the same as the 607.8 meter figure determined from the NDGC 30-second terrain

data base that was used for the antenna height above average terrain along the 68° true radial in determining the distances to the WIMZ-FM contours shown in the attached Figure 1.

Conclusion

The application filed by James Killinger Cornick for an FM station on channel 278A at Marion, Virginia is short-spaced to WIMZ-FM on co-channel 278C at Knoxville, Tennessee. Furthermore, based on the provisions of 47 CFR 73.215, there is prohibited overlap of the 40 dBu [F(50,10)] interfering contour of WIMZ-FM (assuming 100 kilowatts effective radiated power and 600 meters height above average terrain) and the 60 dBu [F(50,50)] protected contour of Mr. Cornick's proposal in contravention to the Commission's Rules.

David E. Dickmann

David E. Dickmann

June 10, 1991

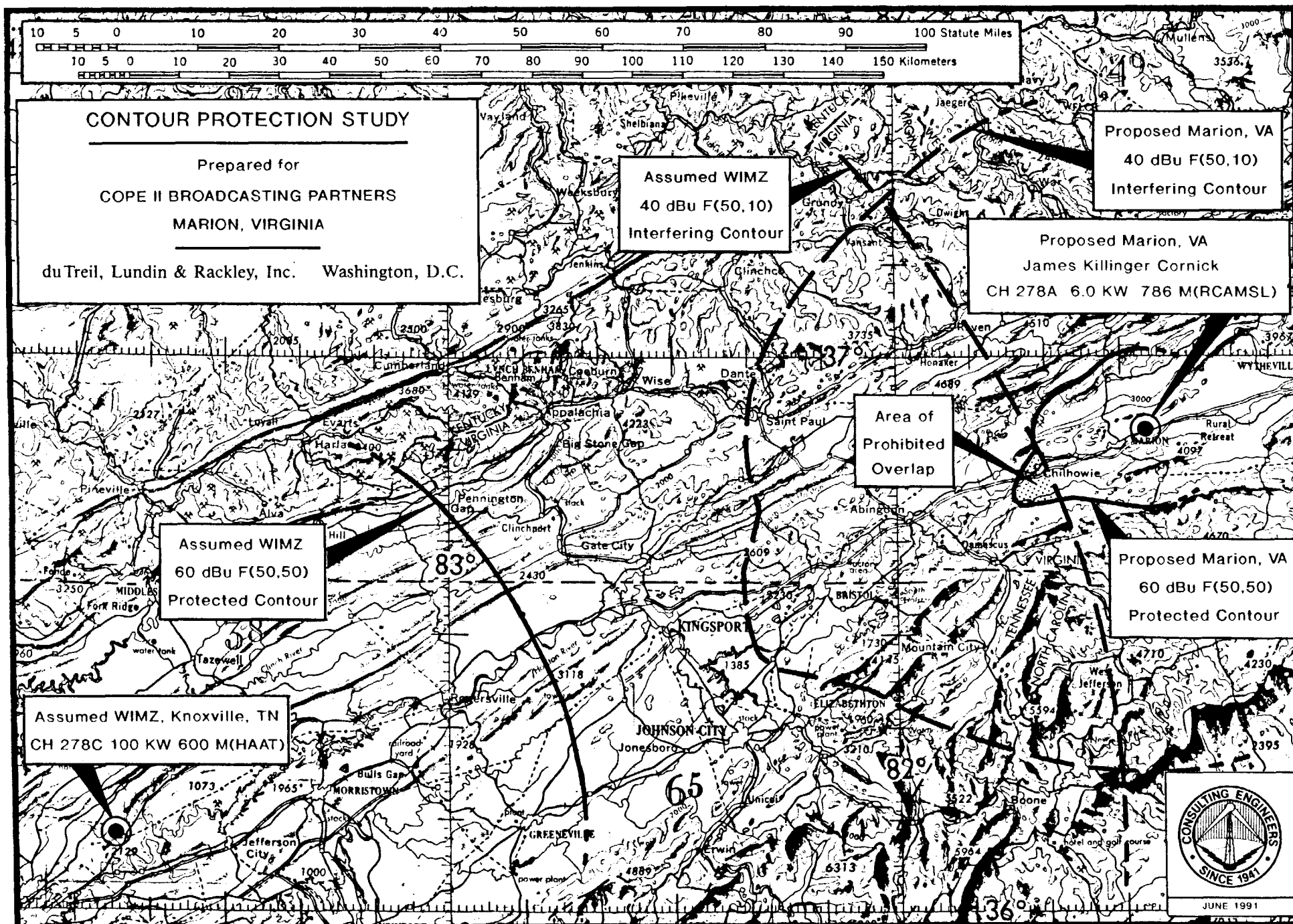


Figure 1

TECHNICAL STATEMENT
IN SUPPORT OF A PETITION TO DENY
THE FM APPLICATION OF JAMES KILLINGER CORNICK
FOR A NEW FM STATION AT MARION, VIRGINIA
PREPARED FOR
COPE II BROADCASTING PARTNERS
MARION, VIRGINIA

Tabulation of Data Employed in Contour Protection Study

Proposed
James Killinger Cornick
Marion, Virginia
CH 278A 6 KW 786 M (RCMSL)

Site coordinates: 36° 52' 00" North Latitude
81° 26' 38" West Longitude

Radial Bearing (deg. T.)	3-16 Kilometer Average Terrain Elevation (meters)	Antenna Height Above Average Terrain (meters)	<u>Distance to Contour (km)</u>	
			60 dBu F(50,50)	40 dBu F(50,10)
0	772.4	13.6	15.8	68.3
45	832.0	-46.0	15.8	68.3
90	793.9	-7.9	15.8	68.3
135	913.4	-127.4	15.8	68.3
180	888.3	-102.3	15.8	68.3
225	741.2	44.8	19.4	74.8
239	675.3	110.7	29.7	88.4
240	673.0	113.0	29.9	88.8
241	672.3	113.7	30.0	88.9
242	673.8	112.2	29.8	88.7
243	676.8	109.2	29.5	88.2
244	680.4	105.6	29.0	87.6
245	683.4	102.6	28.6	87.1
246	685.8	100.2	28.3	86.7
247	687.8	98.3	28.1	86.4
248	689.6	96.4	27.8	86.1
249	691.6	94.4	27.5	85.7
250	694.5	91.5	27.1	85.2
251	698.9	87.2	26.5	84.4

Tabulation of Data Employed in Contour
Protection Study
Marion, Virginia

Figure 2
Sheet 2 of 3

(Continued)

Proposed
James Killinger Cornick
Marion, Virginia
CH 278A 6 KW 786 M (RCMSL)

Radial Bearing (deg. T.)	3-16 Kilometer Average Terrain Elevation (meters)	Antenna Height Above Average Terrain (meters)	Distance to Contour (km)	
			60 dBu	40 dBu
			<u>F(50,50)</u>	<u>F(50,10)</u>
252	703.8	82.2	25.8	83.5
253	709.4	76.6	25.0	82.5
254	713.8	72.2	24.3	81.6
255	717.1	68.9	23.8	80.9
256	719.1	66.9	23.5	80.5
257	721.9	64.1	23.1	79.9
258	725.9	60.1	22.5	79.0
259	730.6	55.4	21.7	77.9
270	726.9	59.1	22.3	78.8
315	767.2	18.8	15.8	68.3

Assumed
WIMZ-FM
Knoxville, Tennessee
CH 278C 100 KW 600 M (HAAT)

Site coordinates: 36° 08' 06" North Latitude
83° 43' 29" West Longitude

Radial Bearing (deg. T.)	3-16 Kilometer Average Terrain Elevation (meters)	Antenna Height Above Average Terrain (meters)	Distance to Contour (km)	
			60 dBu	40 dBu
			<u>F(50,50)</u>	<u>F(50,10)</u>
0	425.6	515.6	87.7	191.8
45	344.3	597.0	91.7	197.6
63	345.5	595.8	91.7	197.5
64	342.6	598.7	91.8	197.7
65	339.3	602.0	91.9	197.9

Tabulation of Data Employed in Contour
Protection Study
Marion, Virginia

Figure 2
Sheet 3 of 3

(Continued)

Assumed
WIMZ-FM
Knoxville, Tennessee
CH 278C 100 KW 600 M (HAAT)

Radial Bearing (deg. T.)	3-16 Kilometer Average Terrain Elevation (meters)	Antenna Height Above Average Terrain (meters)	<u>Distance to Contour (km)</u>	
			60 dBu F(50,50)	40 dBu F(50,10)
66	336.6	604.7	92.0	198.1
67	335.3	606.0	92.0	198.2
68	333.4	607.8	92.1	198.3
69	331.9	609.3	92.2	198.4
70	331.0	610.3	92.2	198.5
71	327.2	614.0	92.4	198.7
72	324.8	616.5	92.4	198.9
90	317.4	623.9	92.7	199.4
135	305.0	636.3	93.2	200.2
180	297.4	643.8	93.5	200.6
225	336.8	604.5	92.0	198.1
270	343.4	597.9	91.7	197.6
315	360.2	581.0	91.1	196.5

CERTIFICATE OF SERVICE

I, Valerie A. Mack, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "PETITION TO DISMISS OR TO DENY" were sent this 2nd day of July, 1991, by first class United States mail, postage prepaid, to the following:

* Dennis Williams, Chief
FM Branch
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 332
Washington, D.C. 20554

James Killinger Cornick
P.O. Box 85
Marion, VA 24354

* By Hand



Valerie A. Mack